IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 15950 of 2000

Between:

Patti Srinath S/o Parthasarathi, Owner of Vaibhav Traders,

M.B.T.Road, Palamaner, Chittoor District.

..... PETITIONER

AND

1. The District Collector, Chittoor.
2. The Inspector of Police VCCS, Tirupathi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of certiorari or any other appropriate writ or direction calling for the records relating to order of the District Judge, Chittoor passed in A.s.No.107/1999 dated 21.07.2000 confirming the order of the 1st respondent passed in Roc.No.S3/6A/164/PLMR/98 dated 26.7.1999 and quash the same.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15950 OF 2000

ORDER:

The petitioner is a dealer in foodgrains and pulses. He obtained licence under A.P.Scheduled Commodities Dealers' (Licensing and Distribution) Order, 1982. The petitioner's premises was inspected by the second respondent on 10.09.1998. He submitted a report to the first respondent. Based on the said report, proceedings under Section 6-A of the Essential Commodities Act, 1955 (the Act, for brevity), were initiated by the first respondent. Three charges were framed against the petitioner, which are as under.

> Charge I – that the dealer failed to maintain true and correct accounts and failed to produce licence to the Inspecting officer and found doing business in food grains without any valid licence contravening Cl.3 of APSCD (L&D) Order, 1982.
>
> Charge II - that the dealer failed to maintain price list cum stock board and getting pecuniary gain by contravening the Cl.3 of A.P.Exhibition Pricelist of Goods Order, 1966.
>
> Charge III - that the dealer failed to submit return in Form-C by 5th of ensuing month to the Licensing Authority thus contravening contd-4 of licence.

The petitioner submitted his explanation. Regarding first charge, he submitted that he was maintaining correct accounts and that he had a valid licence under the Control Order till 31.03.1999. Regarding second charge, he submitted that the pricelist-cum-stock board as required under Clause 3 of A.P.Exhibition of Pricelist of Goods Order, 1966 was duly displayed, but the same was not even mentioned in the panchanama. Regarding third charge, he submitted that he was submitting returns in Form-C regularly. He also pleaded that as per the orders of the Government in

Memo No.26776/CS.II/91-1, dated 07.05.1991, for minor violations prosecution should not be launched and, therefore, he requested to drop the action.

The first respondent by order dated 26.07.1999 ordered confiscation of entire seized stock to the Government under Section
6-A(1)(a) of the Act.

On the first charge, the District Collector came to the conclusion that the petitioner failed to maintain required stock register and that even in the stocks mentioned in the day register do not tally with the ground balance. However, on the question whether the petitioner was carrying on business without proper licence under the Control Order, a finding was recorded in favour of the petitioner. On the second charge, the first respondent came to the conclusion that the price list-cum-stock board was not exhibited and the third charge also held against the petitioner. Aggrieved by the orders of the first respondent, the petitioner preferred an appeal being A.S.No.107 of 1999 on the file of the Court of the District Judge, Chittoor under Section 6-C of the Act, who by order dated 21.07.2000, dismissed the appeal confirming the order of the first respondent. This writ petition is filed assailing the said order.

The learned counsel for the petitioner submits that the petitioner is a holder of licence under the Control Order and that he has maintained accounts regularly. Authorities came to a conclusion on mere surmises though there was nothing against the petitioner. The learned counsel placed reliance on the panchanama recorded on 10.09.1998 by second respondent and submits that there was no allegation regarding second charge in the panchanama and therefore the same should fail. On the question of submitting returns in C-Form, the learned counsel would submit that the returns in C-Form have to be submitted every month, and unless and until they are submitted, the licensee would not be entitled for renewal of the licence. The petitioner's licence was renewed upto 31.03.1999 and the same would belie the allegation that the petitioner did not submit returns in C-Form.

Insofar as charges 2 and 3, they are of minor and trivial in nature and even if the charges are held to be proved, the entire stock seized cannot be confiscated. With regard to the first charge that the petitioner did not maintain the correct accounts, the learned District Judge observed as under.

> … As the second appellant was not in a position to produce the account of the commodities, which he was selling and as he was not in a position to produce any of the returns in Form-C which he alleged to have submitted to the licensing authority earlier, the tribunal below rightly presumed that without maintaining the accounts of the commodities which he was dealing and without submitting the monthly returns under Form-C to the licensing authority, the second appellant since a considerable time had been running the business and thereby evading the taxes and other revenue due to the Government.

The above observations are attacked by the learned counsel for the petitioner as

being mere surmises. There was no allegation in the show cause notice issued by the first respondent that the petitioner was evading taxes and other revenue to the Government. The charge was that the petitioner was not maintaining proper account books and that he failed to produce the account books. Therefore, this Court is in agreement with the learned counsel for the petitioner that the learned appellate authority proceeded on a mere surmise. Even if the said charge is held to be proved, in the considered opinion of this Court, the confiscation of entire stock is not warranted.

This Court in **Dharani Trading Company v State of A.P., N.Panduranga Rao v State of A.P**., and **I.V.Narasimham v Commissioner of Civil Supplies (Appeals), Hyd**, laid down that for trivial contraventions of the relevant Control Order, the authorities cannot order confiscation of entire stock. This Court, in **I.V.Narasimham v Commissioner of Civil Supplies (Appeals), Hyd** (supra), after referring to **P.Purushotham v State of A.P**., and **N.Panduranga Rao v State of A.P**., (supra), laid down as under.

> It must, however, be held that when the contraventions or violations of the Control Order or conditions of licence are of trivial and technical nature, the authorities cannot pass an order without due application of mind. That there is no allegation of clandestine business and that there is no price control and movement control on the essential commodity seized are two important mitigating circumstances which would certainly tilt the balance in favour of the licensee under the Control Order. In such an event, the law expects the Collector, under Section 6-A, as well as the appellate authority under Section 6-C of the Act, to exercise sound discretion, for, an order of confiscation has serious consequences both on the licensee and in some circumstances on the public at large. A reference may be made to the decisions of this Court in P.Purushotham v State of A.P., (supra), wherein this Court considered this aspect of the matter and laid down that for violations or contraventions of technical and trivial nature, an order of confiscation of the entire stock or an order of confiscation of substantial stock would not be justified.

> There are many Control Orders which require the licensee to display stock board and price board on day to day basis. There are also Control Orders which require all the licensees to maintain account books and stock registers reflecting the true state of affairs. No doubt, the law requires strict compliance with all the requirements, but the same, however, does not mean that if substantially the conditions of the licence or the provisions of the Control Order are complied with, an order of confiscation should be passed for violation, especially when there is no allegation of clandestine business.

Applying the above principles though this Court does not find much scope to interfere with the findings recorded by the first respondent as well as the appellate authority, this Court is of considered opinion that confiscation of entire stock seized which is statedly of the value of Rs.12,00,000/- is not justified. Further, there was no movement control on most of the foodgrains seized from the petitioner and all the foodgrains were freely available in the market which dispel any suspicion of black marketing by the petitioner. Taking this into consideration, it would be proper to

order confiscation of the stock to the value of Rs.2,00,000/- (Rupees two lakh only) which was seized from the petitioner on the date of inspection by the second respondent.

The writ petition is therefore partly allowed modifying the order of the first respondent as confirmed by the appellate authority as above. There shall be no order as to costs.

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(V.V.S.RAO,J)

14.06.2005.

pln

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Fourteenth day of June Two thousand and Five.

To

1. The District Collector, Chittoor.
2. The Inspector of Police VCCS, Tirupati.
3. Two CCs to the Government Pleader for Civil Supplies, High Court Building, Hyderabad. (OUT)
4. Two CD copies.